

Remarks

Claims 1-9 are in the case.

Claim 1 is amended herewith to make more definite that which describes what is being claimed. Basis is submitted to be found at pages 2 and 3 of the application as filed.

Claim 2 is amended to correct a typographical error.

Claims 3 and 4 are amended so there is antecedent basis for recitation of "in the form of carbohydrate and fat".

Claim 9 is a new method claim using the composition of claim 1. Basis is found at pages 2 and 3 of the application as filed.

We turn now to the rejections.

Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, on the ground that there is no antecedent basis for energy. By amendment herein "energy" is changed to be --kilocalories--. Reconsideration is requested.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bjorkstrom (WO 01/50889) or Mozzafar (6,096,870) or Ahmed et al. (5,756,680) or Auestad et al. (2004/0214791 A1) or Nielsen (1,607,844).

Reconsideration is requested.

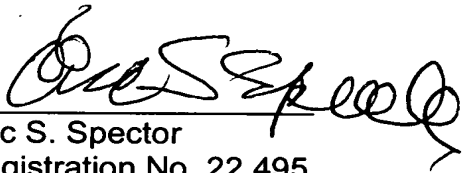
None of the applied references disclose a controlled growth rate newborn infant feeding formula or the method of new claim 9.

While a difference for the composition claims is in the preamble, the preamble should be given effect here as breathing life and meaning into the claim. See Kropa v. Robie, 88 U.S.P.Q. 478 (CCPA 1951); In re Paulson, 31 U.S.P.Q.2d 1671 (Fed. Cir.

1994); Bristol-Myers Squibb v. Ben Venue Laboratories 58 U.S.P.Q.2d 1508 (Fed. Cir. 2001); Perkin-Elmer v. Computer Vision, 221 U.S.P.Q. 669 (Fed. Cir. 1994); and Poly-America v. GSE Lining Technology, 72 U.S.P.Q.2d 1685 (Fed. Cir. 2004).

Allowance is requested.

Respectfully submitted,
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